

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA
LINCOLN DIVISION**

MARIA T. BENSON, an individual)	<u>JURY TRIAL IS REQUESTED</u>
And FREDIE E. BENSON, an individual,)	
)	
Plaintiff,)	
)	
v.)	Case No.: _____
)	
ANDREW L. FRIESEN,)	
CONSOLIDATED CONCRETE)	
COMPANY, BRANDON STRADLEY,)	
and BINGER TRUCKING INC.,)	
)	
Defendants.)	

COMPLAINT

COMES NOW the Plaintiffs, MARIA T. BENSON and FREDIE E. BENSON, and for the relief hereinafter requested, respectfully shows unto the Court as follows:

STATEMENT OF PARTIES

1. Plaintiff MARIE T. BENSON is an individual over the age of nineteen (19) years, who is an adult resident citizen of Walker County, Alabama.
2. Plaintiff FREDIE E. BENSON is an individual over the age of nineteen (19) years, who is believed to be an adult resident citizen of Walker County, Alabama.
3. Defendant ANDREW L. FRIESEN is an individual over the age of nineteen (19) years, who is believed to be an adult resident citizen of Hall County, Nebraska.
4. Defendant BRANDON STRADLEY is an individual over the age of nineteen (19) years, who is believed to be an adult resident citizen of Pierce County, Nebraska.

5. Defendant CONSOLIDATED CONCRETE COMPANY is a domestic corporation which, during all material times relevant to the present action was doing business in Hall County, Nebraska.

6. Defendant BINGER TRUCKING COMPANY is a domestic corporation which, during all material times relevant to the present action was doing business in Hall County, Nebraska.

JURISDICTION & VENUE

7. Plaintiff incorporates by reference the relevant, consistent statements and claims of the preceding paragraphs as if set forth fully, herein.

8. This civil action is filed pursuant to 28 U.S.C. § 1332, as the parties are each citizens of different states, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Accordingly, this Court has proper subject matter jurisdiction.

9. On the date forming the basis of this civil action, ANDREW L. FRIESEN AND BRANDON STRADLEY were operating commercial motor vehicles in Hall County, Nebraska in interstate commerce and within the line and scope of their employment with Defendant CONSOLIDATED CONCRETE COMPANY, and BINGER TRUCKING COMPANY. Accordingly, this Court has personal jurisdiction over the Defendant.

10. The United States District Court District of Nebraska, Lincoln Division, is the proper venue for this civil action, pursuant to 28 U.S.C. § 1391(b)(2).

STATEMENT OF FACTS

11. On or about July 23rd, 2019, Plaintiffs MARIE BENSON and FREDIE BENSON were travelling on Interstate 80, Grand Island, Hall County, Nebraska.

12. At the same time and place ANDREW L. FRIESEN stopped in the only lane of travel to dispense concrete causing BRANDON STRADLEY to violently collide to the rear of Plaintiffs vehicle.

13. At the same time and place the vehicle ANDREW FRIESEN was operating was owned by CONSOLIDATED CONCRETE COMPANY.

14. At the same time and place the vehicle BRANDON STRADLEY was operating was owned by BINGER TRUCKING COMPANY.

15. Due to this collision, the Plaintiff sustained damages.

- (a) They were was caused to incur out-of-pocket medical expenses
- (b) suffer pain and suffering
- (c) emotional distress
- (d) permanently injury.

COUNT ONE
NEGLIGENCE

16. On or about the 23RD day of July, 2019, upon a public roadway, to wit: Interstate 80, Grand Island, Hall County, Nebraska, Defendant CONSOLIDATED CONCRETE COMPANY owned and/or leased, maintained and controlled a 2018 PET, MODEL 567 (VIN # 1NPCXPEX4JD493126) . Defendant BRANDON STRADLEY owned and/or leased, maintained and controlled a 2014 PET, Tractor with SC (VIN # 1XPXD49XXED220111). The Defendant driver BRANDON STRADLEY was involved in an accident with a vehicle occupied by Plaintiffs FREDIE E. BENSON AND MARIE T. BENSON, which resulted in serious personal injuries. At the same time and place ANDREW L. FRIESEN stopped in the only lane of travel to dispense concrete causing BRANDON STRADLEY to violently collided with the rear of Plaintiffs vehicle. Defendant BRANSON STRADLEY negligently, caused or allowed his motor vehicle, to collide

with a motor vehicle operated by Plaintiffs FREDIE E. BENSON AND MARIE T. BENSON Defendants ANDREW L. FRIESEN AND BRANDON STRADLEY negligent and/or wanton conduct was a proximate cause of the Plaintiff's injuries and damages, described more fully below.

17. As a proximate result of the negligent, Defendants ANDREW L. FRIESEN AND BRANDON STRADLEY combined and concurred, Plaintiffs FREDIE E. BENSON and MARIE T. BENSON where caused to suffer the following injuries and damages:

- (a) the Plaintiffs where caused to suffer personal injuries accompanied by physical pain and suffering.
- (b) the Plaintiffs where caused to be permanently injured.
- (c) the Plaintiffs where caused to incur past and future medical expenses.
- (d) the Plaintiffs where caused suffered and continues to suffer mental anguish and emotional distress.

WHEREFORE, Plaintiffs FREDIE E. BENSON AND MARIE T. BENSON demand judgment against each of the Defendants ANDREW L. FRIESEN, BRANDON STRADLEY, CONSOLIDATED CONCRETE COMPANY, and BINGER TRUCKING COMPANY in an amount that will fairly and adequately compensate the Plaintiff for injuries and damages sustained, together with interest from the date of injury and the costs of this proceeding.

COUNT TWO
WANTONNESS

18. Plaintiff incorporates by reference the relevant, consistent statements and claims of the preceding paragraphs as if set forth fully, herein.

19. The wanton conduct of Defendants ANDREW L. FRIESEN AND BRANDON STRADLEY combined and concurred, and as a proximate result thereof, Plaintiffs FREDIE E.

BENSON AND MARIE T. BENSON where caused to suffer the injuries and damages as set forth more fully above.

WHEREFORE, Plaintiffs FREDIE E. BENSON AND MARIE T. BENSON demand judgment against each of the Defendants ANDREW L. FRIESEN, BRANDON STRADLEY, CONSOLIDATED CONCRETE COMPANY, and BINGER TRUCKING COMPANY in an amount that will fairly and adequately compensate the Plaintiff for injuries and damages sustained, together with interest from the date of injury and the costs of this proceeding.

COUNT THREE
RESPONDEAT SUPERIOR

20. Plaintiff incorporates by reference the relevant, consistent statements and claims of the preceding paragraphs as if set forth fully, herein.

21. At the time and place of the collision forming the basis of this civil action, Defendants CONSOLIDATED CONCRETE COMPANY AND BINGER TRUCKING COMPANY were the principal, master and/or employers' of Defendants ANDREW L. FRIESEN AND BRANDON STRADLEY .

22. At the time and place of the collision forming the basis of this civil action, Defendants ANDREW L. FRIESEN AND BRANDON STRADLEY was the agent, servant and/or employee of Defendant CONSOLIDATED CONCRETE COMPANY AND BINGER TRUCKING COMPANY.

23. At the time and place of the collision forming the basis of this civil action, Defendants ANDREW L. FRIESEN AND BRANDON STRADLEY was acting within the line and scope of their employment with Defendants CONSOLIDATED CONCRETE COMPANY AND BINGER TRUCKING COMPANY was operating a commercial motor vehicle in furtherance of the business purposes of Defendants CONSOLIDATED CONCRETE COMPANY

AND BINGER TRUCKING COMPANY.

24. As a result of the foregoing, Defendants CONSOLIDATED CONCRETE COMPANY AND BINGER TRUCKING COMPANY as principals, are vicariously liable to Plaintiffs FREDIE E. BENSON AND MARIE T. BENSON for the negligent, wanton, reckless or willful conduct of Defendants ANDREW L. FRIESEN AND BRANDON STRADLEY , as agent, which proximately caused injuries and damages to Plaintiffs FREDIE E. BENSON AND MARIE T. BENSON.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs FREDIE E. BENSON AND MARIE T. BENSON requests that the jury selected to hear this case render a verdict for the Plaintiff and against Defendants CONSOLIDATED CONCRETE COMPANY AND BINGER TRUCKING COMPANY for compensatory damages in an amount that will adequately compensate the Plaintiff for the injuries and damages sustained due to the Defendant's conduct. Furthermore, the Plaintiffs request that the Court enter a judgment consistent with the jury's verdict, together with interest from the date of the judgment and the costs incurred in prosecuting this lawsuit.

COUNT FOUR
NEGLIGENT HIRING, TRAINING, RETENTION, & SUPERVISION

25. Plaintiff incorporates by reference the relevant, consistent statements and claims of the preceding paragraphs as if set forth fully, herein.

26. At all times relevant to the events forming the basis of this civil action, Defendants CONSOLIDATED CONCRETE COMPANY AND BINGER TRUCKING COMPANY owed a duty to Plaintiff FREDIE E. BENSON AND MARIE T. BENSON , and to the other members of the motoring public, to exercise reasonable care in:

- a. Hiring and retaining its drivers;

- b. Providing training and instruction to its drivers;
- c. Properly supervising its drivers;
- d. Complying with federal, state or local regulations concerning the inspection, maintenance and operations of its commercial vehicles;
- e. Ensuring that its drivers comply with applicable company policies, as well as all federal, state or local regulations concerning the inspection, maintenance and operations of its commercial motor vehicles;
- f. Establishing safe procedures for the operation of its commercial motor vehicles; and
- g. Inspecting, maintaining and repairing its commercial motor vehicles.

27. At all times relevant to the events forming the basis of this civil action, Defendants CONSOLIDATED CONCRETE COMPANY AND BINGER TRUCKING COMPANY breached the duties set forth above by failing to use reasonable care in the:

- a. Hiring of its drivers, employees or agents, including Defendants ANDREW L. FRIESEN AND BRANDON STRADLEY;
- b. Training of its drivers, employees or agents, including Defendant ANDREW L. FRIESEN AND BRANDON STRADLEY;
- c. Retention of its drivers, employees or agents, including Defendant ANDREW L. FRIESEN AND BRANDON STRADLEY;
- d. Supervision of its business operations, by failing to properly monitor the driving habits and records of its drivers, employees or agents in a manner consistent with accepted industry practices, including Defendant ANDREW L. FRIESEN AND BRANDON STRADLEY;
- e. Instruction of its drivers, employees or agents, including Defendant ANDREW L. FRIESEN AND BRANDON STRADLEY;
- f. Supervision of its drivers, employees or agents, including Defendant ANDREW L. FRIESEN AND BRANDON STRADLEY;
- g. Entrustment of a commercial vehicle to its drivers, employees, or agents, including Defendant ANDREW L. FRIESEN AND BRANDON STRADLEY.

- h. Inspection of its commercial motor vehicles;
- i. Proper execution of its business practices and procedures;
- j. Compliance with state and federal regulations;
- k. Enforcement of its drivers', employees' or agents' compliance with state and federal regulations, including Defendant ANDREW L. FRIESEN AND BRANDON STRADLEY;
- l. Inspection and securement of trailers and/or cargo connected to commercial vehicles in the Defendant's ownership, possession and/or control;
- m. Utilization of available information to properly monitor its drivers, employees or agents, including Defendant ANDREW L. FRIESEN AND BRANDON STRADLEY, for compliance with company policies, state regulations and federal regulations; and
- n. Other ways that are yet unknown but may be revealed after further investigation and discovery.

28. As the entity that employed and controlled Defendants ANDREW L. FRIESEN AND BRANDON STRADLEY, Defendant CONSOLIDATED CONCRETE COMPANY AND BINGER TRUCKING COMPANY failed to take the required actions to assure that the individual drivers were properly hired, trained, retained and supervised.

29. As a proximate consequence of Defendant CONSOLIDATED CONCRETE COMPANY AND BINGER TRUCKING breached the duties described above and specifically related to its negligent hiring, training, retention and supervision of Defendant ANDREW L. FRIESEN AND BRANDON STRADLEY, Plaintiff FREDIE E. BENSON AND MARIE T. BENSON suffered the injuries and damages set forth in paragraph seventeen (17), above.

WHEREFORE, PREMISES CONSIDERED, Plaintiff FREDIE E. BENSON AND MARIE T. BENSON requests that the jury selected to hear this case render a verdict for the Plaintiff and against Defendant ANDREW L. FRIESEN, BRANDON STRADLEY

CONSOLIDATED CONCRETE COMPANY, AND BINGER TRUCKING COMPANY for compensatory damages in an amount that will adequately compensate the Plaintiff for the injuries and damages sustained due to the Defendant's conduct. Furthermore, the Plaintiff requests that the Court enter a judgment consistent with the jury's verdict, together with interest from the date of the judgment and the costs incurred in prosecuting this lawsuit.

DATED: This the 12th day of October 2020.

/s/ Bradford J. Griffin
Bradford J. Griffin (ASB-6237-O72G)
Attorney for the Plaintiff

OF COUNSEL:

SHUNNARAH INJURY LAWYERS, PC
3626 Clairmont Avenue South
Birmingham, Alabama 35222-3508
P (205) 323-1000
F (205) 323-1877

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing to be attached to and served with the original Summons and Complaint in this action.

ANDREW L. FRIESEN
4030 W HUSKER HIGHWAY
GRAND ISLAND, NE 68803

BRANDON STRADLEY
53603 867 ROAD
PLAINVIEW, NE 68769

CONSOLIDATED CONCRETE COMPANY
3340 W OLD HIGHWAY 30
GRAND ISLAND, NE 68802

BINGER TRUCKING COMPANY
53715 867 ROAD
PLAINVIEW, NE 68769

/s/ Bradford J. Griffin
OF COUNSEL